IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16/07/2004

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THE HONOURABLE MR. JUSTICE P.K. MISRA

WRIT PETITION NO.15649 OF 2001

R. Sekar,
S/o.V.R. Ramachandran .. Petitioner

-Vs-

1. The Presiding Officer,
Principal Labour Court,
Chennai 1.

2. The Management,
Bush Boake Allen (India) Ltd.,
St. Thomas Mount,
Chennai 16. .. Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Certiorarified Mandamus as stated therein.

For Petitioner : Mr.R. Lawrence

For Respondent-2 : Mr.S. Ravindran for
M/s.T.S. Gopalan & Co.

:J U D G M E N T

The petitioner has prayed for quashing the award dated 23-8-2000 in I.D.No.188 of 1995 and consequentially to direct the second respondent to reinstate the petitioner with all benefits.

2. The aforesaid I.D.No.188 of 1995 was heard along with several other disputes under Section 2-A(2) of the Industrial Disputes Act between the concerned employees and the present respondent No.2. The brief facts, so far as relevant to the present petitioner, are as follows :-
The petitioner was employed under the respondent No.2 as a workman and continued as such for a period of 23 years. Thereafter the petitioner was terminated on 30.6.1993 in the guise of voluntary retirement from service. The petitioner was paid a sum of Rs.1,49,875.91/- towards the so called dues on the voluntary retirement. It was the case of the petitioner that though

such termination was styled as if it was a voluntary retirement, actually the petitioner was forced to retire.

3. It was the contention of the petitioner before the Labour Court that juniors to him are working and the petitioner, who was senior to them, was thrown out under voluntary retirement scheme, which was violative of the provisions contained in Section 25-G of the Industrial Disputes Act. It was his further contention that in the absence of any provision in the statutory Standing Orders, there is no power to invoke such a scheme and the retirement was not voluntary, but involuntary. It was further contended that at any rate voluntary resignation could not have been accepted before completion of three months period as envisaged under Section 25-N of the Industrial Disputes Act. It was also the contention before the Industrial

Forum that under coercion and undue influence, amount had been paid and the petitioner had been purportedly retired under the so called voluntary retirement scheme.

4. The stand of the second respondent before the Labour Court was to the effect that the voluntary retirement scheme had been floated and the persons like the petitioner and other disputants in the Industrial Disputes had voluntarily availed of the scheme and had received the benefit of the lumpsum and also subsequently received the benefit of monthly pension as envisaged. Therefore, the provisions contained in the Industrial Disputes Act were not at all attracted.

5. The Presiding Officer, Labour Court, framed the following issues :-

 1. Whether the voluntary retirement scheme said to have been opted by the petitioners is genuine and bonafide ?
2. Whether the petitioners in all these petitions are entitled for reinstatement in service with full backwages and other attendant benefits ?

6. While deciding issue No.1, the Labour Court on the basis of the evidence on record came to the conclusion that prior to the introduction of Voluntary Retirement Scheme, under which the petitioner had retired, similar Schemes had been introduced and many of the workmen had availed of such Schemes, and the workmen after having availed the benefit, they had issued notice complaining that their signatures had obtained under duress. The allegation that the workmen had been forced to sign the voluntary retirement papers was negatived. The contention that in the absence of any provision contained in the Standing Orders, such scheme should not have been floated was also negatived and it was observed that the voluntary retirement scheme is a recognised method of cessation of employment. Ultimately, it was concluded that the workmen had opted for voluntary retirement scheme voluntarily and there was no infirmity. Accordingly, all the Industrial Disputes, including the one raised by the petitioner, were dismissed.

7. Learned counsel appearing for the petitioner has

vehemently contended that in the absence of any provision in the Standing Orders, no such voluntary retirement scheme can be floated by any employer.

8. As per Section 2(oo),
"retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include -
(a) voluntary retirement of the workman; or
(b) to (c) . . .

It is thus obvious that if there is any voluntary retirement, such matter will not come within the expression of "retrenchment". It is not necessary that in the Standing Orders any provision has to be made for voluntary retirement. As per the terms offered by the employer it would be open to the employee to opt for the voluntary retirement. In such view of the matter, the contention of the petitioner that in the absence of any specific provision in the Standing Orders there cannot be any scheme for voluntary retirement, is not acceptable.

9. Learned counsel for the petitioner has also contended that the second respondent did not follow the provisions contained in Section 2 5-G of the Industrial Disputes Act. Section 25-G contains a recognised well known principle "last come first go". However, since the voluntary retirement is not such a retirement as envisaged under Section 2(oo), the provisions contained in Section 25-G obviously would be inapplicable to the case of voluntary retirement.

10. Learned counsel for the petitioner has also contended that the provisions contained in Section 9-A of the Industrial Disputes Act had not been complied with. Section 9-A relates to effecting any change in the conditions of service applicable to any workman. However, since voluntary

retirement is on the basis of the option exercised by the employee himself, there is no scope for invoking the provisions contained in Chapter II-A to such voluntary retirement.

11. Learned counsel for the petitioner has contended that in the facts and circumstances of the present case it cannot be said that there was any actual voluntary retirement and the action of the management was vitiated by duress and coercion. The Presiding Officer, Labour Court, on consideration of the materials on record, came to a factual conclusion that there was no coercion and the workmen concerned had retired voluntarily by giving their option. This conclusion is basically a finding of fact based on discussion of relevant materials on record. The High Court while dealing with such matters under Article 226 of the Constitution of India, does not sit as an appellate authority over the decision of the Industrial Forum.

12. In the present case, the Labour Court has referred the materials available on record and after taking into consideration the facts and circumstances of the case, came to a particular conclusion and merely because such a conclusion is not to the liking of the petitioner or even of the High Court, a different view cannot be taken. By no stretch of

imagination it can be said that the conclusions of the Labour Court are based on no evidence or perverse. Keeping in view the limited scope of interference under Article 226 of the Constitution of India in such matters, I hardly find no scope to come to a different conclusion.

13. For the aforesaid reasons, I do not find any merit in this writ petition, which is accordingly dismissed. No costs.

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To

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2. The Management,
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St. Thomas Mount,
Chennai 16.